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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/874,031	06/06/2001	Linda Roskin	Roskin-1	7600

7590 09/18/2002

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EXAMINER

VALENTI, ANDREA M

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 09/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicati n No.

09/874,031

Applicant(s)

ROSKIN, LINDA

Examin r

Andrea M. Valenti

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with th correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 July 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 5-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

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SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

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Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5-7, 9-15, and 17-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner in view of U.S. Patent No. 3,768,685 to Eckman.

Regarding Claims 11, 18, 21 and 22, Turner teaches a method and container having an open top end with a predetermined maximum width (Turner Fig. 3 #14); a cover element for covering the open top end (Turner Fig. 1 #10), a plurality of openings defined in the cover element (Turner #12)

Turner does not explicitly teach that the cover is elastomeric having an unstretched width that is smaller than the maximum width of the open top. However, Eckman teaches an elastic container cover element. It would have been obvious to one of ordinary skill in the art to modify the teachings of Turner since the modification is merely an engineering design choice of selecting a known material for intended use to obtain a tight frictional seal over the opening as taught by Eckman (Eckman Col. 1 line 20-22).

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Regarding Claim 5, Turner as modified teaches the plurality of opening are symmetrically disposed throughout the planar top surface (Turner Fig. 2 #12).

Regarding Claims 6, 14, and 20, Turner as modified teaches the plurality of openings are arranged in linear rows and columns (Turner Fig. 2).

Regarding Claims 7 and 15, Turner as modified inherently teaches the openings are slots that enlarge when the plant top surface is stretched.

Regarding Claims 9 and 17, Turner as modified teaches the planar top surface has a circular peripheral shape (Turner Fig.2 and 3).

Regarding Claims 10, 12, and 18, Turner as modified is silent on a polygonal shape or any other shape. However, it would have been obvious to one of ordinary skill in the art to modify the teachings of Turner since the modification is merely a change in shape for aesthetic appeal for marketability and to accommodate different shaped flower pots and therefore does not present a patentably distinct limitation.

Regarding Claim 13, Turner as modified teaches the cover element has a planar top surface and a peripheral wall that extends downwardly from the planar top surface (Turner Fig. 4).

Claims 8 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over European Patent EPO 0182453 to Turner as applied to claims 11 and 22 above, and further in view of U.S. Patent No. 2,876,587 to Saks et al

Regarding Claims 8 and 16, Turner as modified teaches the elastomeric grid can be constructed from any type of flexible material, but is silent on the material being

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translucent. However, Saks et al teaches a vase grid cover for holding plant stems that is translucent (Saks et al Col. 2 line 13-14). It would have been obvious to one of ordinary skill in the art to modify the teachings of Turner with the teachings of Saks et al since the modification is merely an aesthetic design choice selected to enhance the appearance of the flora arrangement as taught by Saks et al.

Response to Arguments

Applicant's arguments with respect to claims 5-22 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrea M. Valenti whose telephone number is 703-305-3010. The examiner can normally be reached on 7:30am-5pm M-F; Alternating Fridays Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703-308-2574. The fax phone numbers for the organization where this application or proceeding is assigned are 703-306-4195 for regular communications and 703-305-0285 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-4357.

AMV
September 14, 2002



PETER M. POON
SUPERVISORY PATENT EXAMINER
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